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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In The Matter of )

TOLL FREE SERVICE ACCESS CODES ) CC Docket No. 95-155

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REPLY COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA" or "Association"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415 (1995), hereby submits its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM"), FCC 95-419 (released October 5, 1995) and the initial comments filed in this proceeding.

I. INTRODUCTION

The initial comments filed in this proceeding disclose widespread agreement among the commenters on several points which TRA made in its initial Comments. In short, the commenters generally agree that: (1) a verifiable subscriber order for a toll-free number should be required before a toll free service provider or Responsible Organization ("RespOrg") should be permitted to reserve the number in the 800/Service Management System ("800/SMS") database; (2) requiring an escrow deposit to reserve toll free numbers would disproportionately disadvantage smaller service providers and RespOrgs and create administrative burdens that are not justified by any meaningful benefit; (3) the 800/SMS database should be administered by a neutral third party that is unaffiliated with any toll

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free service provider or RespOrg; and (4) the provision of toll-free directory assistance service should be opened to competition.

Issues which warrant additional discussion based on the initial comments are discussed in further detail below.

## **II. ARGUMENT**

### **A. The Commission Should Use Interexchange Carrier Presubscription Requirements as a Model for Subscriber Orders for Toll Free Numbers.**

#### **1. Reservation of Toll Free Numbers Generally**

As noted previously, widespread consensus existed among the parties filing initial comments in this proceeding concerning the requirement that toll free service providers and RespOrgs have a verifiable order for a toll-free number before they could reserve the number. Such a requirement should be adopted as a Commission rule, and violations of the rule should be sanctioned by strict penalties for warehousing, discussed below.

Commenting parties have generally agreed that service providers and RespOrgs should have some degree of flexibility in taking and documenting subscriber orders for toll-free numbers, including the ability to take orders over the telephone. Certain commenters have proposed that the procedures required to document subscribers' requests for a change in their primary interexchange carrier ("PIC") be used as a model for the types of verification procedures toll free service providers and RespOrgs should use to demonstrate subscriber orders for toll free numbers.<sup>1/</sup>

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<sup>1/</sup> See, e.g., Comments filed by the Ameritech Operating Companies ("Ameritech Comments") at 5; Comments filed by the Competitive Telecommunications Association ("CompTel Comments") at 6.

These procedures, however, which were adopted in CC Docket No. 94-129, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 F.C.C. Rcd. 9560, FCC 95-225 (released June 14, 1995) (hereinafter cited as "Changes of Consumers' Long Distance Carriers"), should not be adopted in a wholesale manner, because they incorporate consumer protection provisions that are unnecessary in the context of toll free service, where subscribers are generally more sophisticated commercial users, and the abuses the protections were designed to curb should not be a significant concern.

Thus, service providers and RespOrgs should be permitted to reserve toll free numbers only if they have a verifiable order from a subscriber for that number. Although subscribers should be permitted to place orders in a variety of ways, including completing a paper order form, placing an order by telephone, and even ordering the number electronically, through an online connection with a service provider or RespOrg, ultimately the service provider or RespOrg should be required to demonstrate that it had obtained the following minimal indicia of the subscriber's order and intention to use the ordered number: (1) the subscriber's billing name and address, the toll free number(s) ordered by the subscriber, and the port locations for each number; (2) a specific order for the number(s) by the subscriber; and (3) the subscriber's choice of a particular service provider as the initial provider of toll free service using the ordered number(s).

Toll free service providers and RespOrgs should be required to retain documentation satisfying the requirements described above for one year. Although the Commission proposed that documentation be retained for two years, NPRM at ¶ 13, a one-year record retention requirement should aid enforcement of the number reservation requirements

while not unduly burdening service providers and RespOrgs. It is likely that disputes over a party's reservation of a toll free number would arise within one year, and the Commission's authority to order a forfeiture for violation of the Communications Act or a Commission rule is limited to events that occurred within a year of the forfeiture<sup>2/</sup>; therefore, a two-year recordkeeping requirement would seem to be unnecessary for enforcement purposes.

## 2. Reservation of Numbers for Subscriber Proposals

Bell Atlantic has proposed that RespOrgs and service providers be permitted to reserve toll free numbers without having orders for the numbers where the numbers will be part of a service proposal to a prospective subscriber<sup>3/</sup>. While this proposal has some merit, the flexibility it would provide to service providers should be tempered by the need to prevent warehousing of desirable toll free numbers. Thus, the length of time that numbers could be reserved for such promotional purposes should be strictly limited (e.g., to 30 days), and parties reserving such numbers should be required to submit the proposal for which the number was reserved to a prospective customer within a prescribed time (e.g., seven days) after the number is reserved. In addition, limits should be placed on the number of orders a carrier can place for promotional numbers within a given period.

These restrictions should limit the quantity of numbers that are unavailable because they are in reserved status and limit the opportunity for service providers and RespOrgs to reserve numbers prematurely, before they had devoted substantial consideration to the

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<sup>2/</sup> 47 U.S.C. § 503(b)(6).

<sup>3/</sup> Comments of Bell Atlantic telephone companies ("Bell Atlantic Comments") at 2.

possible use of those numbers. Because of their ability to reserve large quantities of numbers quickly, larger toll free service providers and RespOrgs are better positioned to reserve quantities of desirable numbers ostensibly for promotional purposes, to the detriment of smaller competitors. This competitive advantage could be curbed in part by the proposed limitations on reservation of numbers for promotional purposes.

**B. Reducing Lag Time**

Although the initial comments were diverse on the issue of reducing the time that numbers can remain in reserved status as a means of increasing the quantity of available toll free numbers, somewhat of a consensus developed for reducing the time from 60 to 45 days. In addition, the period of time for which a number can be in assigned, but not working, status should be reduced from 12 to 4 months, and the period for which numbers can be suspended but not reactivated should similarly be reduced from 12 to 4 months as long as subscribers' implementation of toll free numbers is not unnecessarily disrupted by the shortened periods.

As to the "aging" process for toll free numbers between disconnection or cancellation of a number and reassignment of the number, this period serves an important function, and should remain at six months to reduce the incidence of dialing wrong numbers, protect subsequent assignees of previously used numbers from excessive expense for wrong numbers, and minimize consumer confusion.

**C. Encouraging Use of PIN Technology**

Two primary themes have emerged from commenters addressing the use of Personal Identification Number ("PIN") technology in connection with toll free numbers: First, the use of PIN technology should be encouraged, but not mandated. Second, any

encouragement of PIN technology should be conditioned on resolving any technological compatibility issues involving number portability, a policy objective that should take precedence over encouraging PIN technology.

As TRA noted in its initial Comments, requiring the use of PIN technology could place businesses using PIN numbers at a competitive disadvantage vis-a-vis businesses that do not use PIN numbers solely because the latter can be reached by dialing fewer numbers; however, if (and only if) PIN technology reaches a stage where it can be accommodated without hindering number portability, then it could be mandated on a phased-in basis for subscribers (such as paging services) using toll free numbers to serve large numbers of low-volume end users. Under no circumstances, however, should number portability be compromised to encourage the use of PIN technology.

**D. New Toll Free Codes Should Be Administered In a Manner that Minimizes Waste and Maximizes Competition.**

Although a number of commenters agree that limits should be placed on the ability of RespOrgs to reserve toll-free numbers, there is little consensus among the commenters as to what those limits should be. TRA continues to believe that such limits could operate to the competitive detriment of smaller toll free service providers, who rely on RespOrgs that are also large toll free service providers, such as AT&T, MCI, and Sprint, for assignment of their toll free numbers. If the availability of toll free numbers is restricted, RespOrgs who are also service providers can logically be expected to attend to their own needs for numbers before they respond to requests from smaller competitors. Any limits on the quantity of toll free numbers a RespOrg can reserve should be crafted so as not to disadvantage smaller RespOrgs disproportionately.

At the same time, a lack of meaningful limits on the ability of RespOrgs to reserve toll free numbers could lead to warehousing of numbers and waste of numbering resources. As TRA noted in its initial Comments, adoption of a Commission rule that codifies the existing Industry Guideline requiring every RespOrg to have a firm order from a subscriber before it can reserve a toll-free number<sup>4/</sup> should reduce warehousing of numbers and assist smaller RespOrgs and all service providers in obtaining numbers when needed. Violations of such a rule should be penalized by meaningful sanctions to encourage compliance.

A substantial consensus exists among the commenters that the present first-come, first-served approach to reserving toll free numbers should continue. In light of the broad support for that approach, TRA continues to believe that a lottery procedure would seem to the most equitable method of resolving the inevitable competing claims for the same number that will arise under such an approach. Indeed, lotteries should be the exclusive method of allocating toll free numbers that are in particularly high demand, such as 8XX-555-XXXX, as they are the most equitable means to allocate scarce resources. If the Commission wishes to ensure that such scarce resources as 8XX-555 numbers are not wasted on parties that are unable to offer the public the greatest benefits available with those numbers, it could devise certain minimum criteria that parties would have to satisfy to be eligible to participate in the lotteries.

**E. Penalties for Warehousing Toll Free Numbers.**

It appears that, despite Industry Guidelines,<sup>5/</sup> certain RespOrgs are warehousing toll

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<sup>4/</sup> Industry Guidelines for 800 Number Administration (June 8, 1995) ("Industry Guidelines") at § 2.2.5.

<sup>5/</sup> See *supra*, note 6.

free numbers, *i.e.*, reserving numbers for which they have no immediate order from a subscriber.<sup>6/</sup> There is virtually no disagreement that warehousing of toll free numbers harms competition and accelerates toll free number depletion. Numerous commenters have recognized the Commission's authority to adopt a variety of sanctions to penalize warehousing, including the imposition of fines or forfeitures, suspension of violators' ability to reserve additional numbers, limitation of violators' ability to reserve toll free numbers at any one time, and de-certification of violators as RespOrgs. Certainly, the Commission could and should find that warehousing of toll free numbers is an unreasonable practice under Section 201(b) of the Communications Act, and it should penalize parties that are found to be warehousing numbers with a variety of sanctions, depending on the severity of the violation, whether it was knowingly or willfully committed, and whether the violator has previously committed warehousing violations.

**F. Assignees of Vanity Numbers Should Not Have a Right of First Refusal With Respect to Similar Numbers with New Service Access Codes.**

As it stated in its initial comments, TRA continues to believe that subscribers have a legitimate interest in protecting the commercial value of vanity toll free numbers -- *i.e.*, numbers that spell a significant word -- assigned to them; but this interest must be balanced against the public interest in the widest availability of toll free numbers and the recognition that no party has an ownership interest in a particular telephone number.<sup>7/</sup> Among the parties commenting on the protection that should be afforded subscribers of vanity numbers, both a minority view and a majority view seem to have emerged.

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<sup>6/</sup> NPRM at ¶ 33.

<sup>7/</sup> NPRM at ¶¶ 36, 38 & notes 79-83.



The minority would provide some form of protection to subscribers of vanity numbers for the same numbers having different service access codes. Commenters differ on the form which such protection should take, but they include different permutations of a right of first refusal and delayed deployment of vanity numbers with different service access codes.<sup>8/</sup> It is clear from all of these proposals, however, that administration of any such preference system would be difficult at best and arbitrary, discriminatory, and highly contentious at worst.<sup>9/</sup>

The better view, and the view that seems to be supported by a majority of commenters, is that any preemptive rights in favor of vanity number subscribers would unnecessarily limit the universe of available vanity numbers and conflict with the policy against creating private proprietary rights in telephone numbers.<sup>10/</sup> Moreover, existing laws, including intellectual property, unfair competition, and consumer protection laws, would seem to provide adequate remedies to parties whose commercial interests are threatened or adversely affected by a competitor's use of a similar toll free number.<sup>11/</sup>

As TRA proposed in its initial comments, and the Direct Marketing Association coincidentally echoed,<sup>12/</sup> the interest of subscribers in their vanity numbers can be protected while permitting use of the same combination of numbers (though with different service

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<sup>8/</sup> See, e.g., Comments of AT&T at 24-27, MCI at 15, and LDDS Worldcom at 13-15.

<sup>9/</sup> See, e.g., Comments of Time Warner at 7, Sprint at 20, Bell Atlantic at 8.

<sup>10/</sup> See, e.g., Comments of United States Telephone Association ("USTA") at 4-7; Bell Atlantic at 8; Paging Network, Inc. at 13-15.

<sup>11/</sup> See, e.g., Comments of Ameritech at 32, Sprint at 21-22, USTA at 8.

<sup>12/</sup> Comments of the Direct Marketing Association at 12.

access codes), by requiring subsequent subscribers seeking to use the same combination of numbers to commit that they will not promote or market the numbers using the same words as the earlier subscribers unless the two subscribers are engaged in businesses that are so different that the risk of confusion by consumers of the earlier and the later subscribers is virtually non-existent. Failure of the later subscribers to comply with this requirement should be grounds for cancellation of their right to use the number.

### III. CONCLUSION

The proposals set forth above should enhance competition among toll free service providers and increase the availability of toll free numbers without imposing onerous administrative burdens or costs on either the Commission or any industry segment. For these reasons, TRA respectfully requests that the Commission adopt the proposals contained herein.

Respectfully submitted,

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